



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2020-0702 FRL-9537-01-R4]

#### **Air Plan Approval; Georgia; Air Quality Control, Miscellaneous Rule Revisions to Definitions and Permitting**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve changes to the Georgia state implementation plan (SIP) submitted on behalf of the State of Georgia by the Georgia Environmental Protection Division (GA EPD) through a letter dated September 1, 2020. This revision includes changes to the State's air quality regulations incorporated into the SIP by changing the definition of "pollution control project" and making minor changes to the corresponding minor new source review (NSR) permitting regulations for consistency. EPA is proposing to approve this SIP revision because the State has demonstrated that these changes are consistent with the Clean Air Act (CAA or Act).

**DATES:** Comments must be received on or before **[Insert date 30 days after date of publication in the FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2020-0702 at [www.regulations.gov](https://www.regulations.gov). Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include

discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit [www2.epa.gov/dockets/commenting-epa-dockets](http://www2.epa.gov/dockets/commenting-epa-dockets).

**FOR FURTHER INFORMATION CONTACT:** Pearlene Williams, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. The telephone number is (404) 562-9144. Ms. Williams can also be reached via electronic mail at [williams.pearlene@epa.gov](mailto:williams.pearlene@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

Section 110(a)(2)(C) of the CAA requires that SIPs include a program for regulating the construction and modification of stationary sources as necessary to ensure that the national ambient air quality standards (NAAQS) are achieved. This program is known as NSR and is composed of three separate programs for issuing permits for the construction of new sources and the modification of existing sources: Prevention of Significant Deterioration (PSD), Nonattainment New Source Review (NNSR), and minor NSR. PSD applies to major stationary sources in areas designated as attainment or unclassifiable for a NAAQS; NNSR applies to major stationary sources in nonattainment areas; and the minor NSR program applies to new or modified stationary sources that do not require PSD or NNSR permits, as necessary to assure that NAAQS are achieved.<sup>1</sup> Georgia has a SIP-approved minor NSR program at Georgia Rule 391-

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<sup>1</sup> Areas that EPA has determined to be in attainment with a NAAQS are designated as “attainment areas;” areas that EPA has determined to have insufficient information to determine whether the area meets a NAAQS are designated as “unclassifiable areas;” and areas that EPA has determined to be in violation of a NAAQS are designated as “nonattainment areas.”

3-1-.03, and this notice of proposed rulemaking (NPRM) pertains to certain Georgia SIP-approved rules regulating minor NSR program permit exemptions.

EPA is proposing to approve a SIP revision submitted on behalf of the State of Georgia by GA EPD through a letter dated September 1, 2020.<sup>2</sup> This revision changes the definition of “pollution control project” (PCP) at Georgia Rule 391-3-1-.01(qqqq). Pursuant to Rule 391-3-1-.03(6), “Exemptions,” at subsection (j),<sup>3</sup> PCPs are exempt from the requirement to obtain a minor source construction permit under Georgia Rule 391-3-1-.03(1), “Construction (SIP) Permits.” The submittal first changes the definition of PCP to require that any collateral emissions increase from a PCP must be lower than the emissions thresholds established to exempt cumulative modifications at Rule 391-3-1-.03(6)(i)3.(i)-(v) from minor source construction permitting.<sup>4</sup> Secondly, the definition is changed to revise the list of projects that are presumed to be environmentally beneficial and qualify as PCPs. Lastly, the definition is revised to change rule cross-references for consistency with the revision to the list of projects. The September 1, 2020, SIP revision also makes changes to Rule 391-3-1-.03, “Permits,” at section (6)(j), “Construction Permit Exemption for Pollution Control Projects” to update the cross-references to Rule 391-3-1-.01(qqqq) to correspond to the updated list of projects. The changes to Rule 391-3-1-.03(6) also include minor administrative edits that do not change the meaning of the existing SIP-approved provisions.

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<sup>2</sup> The September 1, 2020, submittal contains changes to other SIP-approved rules that are not addressed in this notice. EPA will be acting on those rules separately.

<sup>3</sup> EPA approved the PCP definition into the SIP, with the exception of subsections (qqqq)1. and (qqqq)3.-8., on May 29, 2020. *See* 85 FR 32300.

<sup>4</sup> SIP-approved Rule 391-3-1-.03(6)(i)3 states “Cumulative modifications not covered in an existing permit to an existing permitted facility where the combined emission increases (excluding any contemporaneous emission decreases, i.e., “netting” is not allowed) from all nonexempt modified activities are below the following thresholds for all pollutants: (i) 25 tons per year of carbon monoxide; (ii) 150 pounds per year total with a 1.5 pound per day maximum emission of lead; (iii) 10 tons per year of particulate matter, PM10 or sulfur dioxide; (iv) 10 tons per year of nitrogen oxides or volatile organic compounds (VOCs) except in the counties of Cherokee, Clayton, Cobb, Coweta, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry, Paulding, or Rockdale, where less than 2.5 tons per year of nitrogen oxides or VOCs is exempted; and (v) 2 tons per year total with a 15 pound per day maximum emission of any single hazardous air pollutant and less than 5 tons per year of any combination of hazardous air pollutants.”

Federal regulations governing the implementation of minor NSR programs are codified at 40 CFR 51.160 through 51.164. With regard to revisions to SIPs, CAA section 110(l) provides that EPA shall not approve a revision to a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in CAA Section 171), or any other applicable requirement of the CAA. Section 193 of the CAA provides, in part, that “No control requirement in effect, or required to be adopted by an order, settlement agreement, or plan in effect before November 15, 1990, in any area which is a nonattainment area for any air pollutant may be modified after November 15, 1990, in any manner unless the modification insures equivalent or greater emission reductions of such air pollutant.”<sup>5</sup> EPA believes the proposed changes submitted by Georgia will not lead to any increases of NAAQS pollutants and will not otherwise interfere with any CAA applicable requirement. The changes to the PCP rules and EPA’s rationale for proposing approval are described in more detail in section II of this NPRM.

## **II. Analysis of the State’s Submission**

EPA is proposing to approve changes to the definition of “pollution control project” at section (qqqq) of Rule 391-3-1-.01, “Definitions.” The changes add language to ensure that an environmentally beneficial activity, set of work practices, or projects at an existing emissions unit that reduces emissions may be considered a PCP only if any associated collateral emissions increase is less than the thresholds listed in Rule 391-3-1-.03(6)(i)3.(i)-(v). This change to the definition is SIP-strengthening as it acts to restrict the PCP construction permitting exemption in SIP-approved Rule 391-3-1-.03(6)(j) to projects with emissions below the thresholds in Rule 391-3-1-.03(6)(i)3.

The State revised the number of projects listed in section 391-3-1-.01(qqqq) that are presumed to be environmentally beneficial and qualify as PCPs by removing subsections

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<sup>5</sup> Several counties in the Atlanta, Georgia metropolitan area are designated as marginal nonattainment for the 2015 8-hour ozone NAAQS. See 40 CFR 81.311.

(qqqq)1., 3., 5., 6., 7. and 8. However, subsections (qqqq)1. and 3. through 8. are not in the SIP.<sup>6</sup> Therefore, the net proposed change to the Georgia SIP is that SIP-approved subsection (qqqq)2. is renumbered as (qqqq)1.<sup>7</sup> and a new (qqqq)2 is added.<sup>8</sup> Adding the projects listed in subsection (qqqq)2. would not increase the number of projects exempt from permitting under the SIP because they must have emissions below the thresholds in the revised PCP definition, and therefore, already qualify for the SIP permitting exemption found at subsection 391-3-1-.03(6)(i)3. Lastly, the definition is revised to change rule cross-references to the listed PCP subsections from 391-3-1-.01(qqqq)1. through 8. to 391-3-1-.01(qqqq)1. and 2. for consistency with the revision to the list of projects.

In addition, this revision modifies cross-references in Rule 391-3-1-.03(6), “Exemptions,” to align with revisions made in section .01(qqqq) by changing the citation “subsection 391-3-1-.01(qqqq)1. through 8.” to “subsection 391-3-1-.01(qqqq)1. and 2.” Furthermore, this revision replaces the phrase “million BTUs per hour” with its abbreviated form, “MMBtu/hr,” throughout Rule 391-3-1-.03(6) and makes a change at subparagraph 391-3-1-.03(6)(h)14.(vii) by adding the word “and” to the end of a phrase for clarity.

Because the aforementioned changes do not alter the universe of sources exempted from minor source construction permitting under the SIP with this revision, Georgia’s SIP is not being relaxed. Therefore, EPA believes that these changes are consistent with CAA sections 110(l) and 193, and requirements for minor source permitting in CAA section 110(a)(2)(C) and federal regulations. Thus, EPA is proposing to approve the SIP revision.

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<sup>6</sup> See 85 FR 32300 (May 29, 2020).

<sup>7</sup> SIP-approved Subsection (qqqq)2., proposed to be renumbered as (qqqq)1., lists “[e]lectrostatic precipitators, baghouses, high-efficiency multiclones, or scrubbers for control of particulate matter or other air contaminants.”

<sup>8</sup> The new subsection (qqqq)2. states “[r]egenerative thermal oxidizers, catalytic oxidizers, condensers, thermal incinerators, hydrocarbon combustion flares, biofiltration, absorbers and adsorbers, and floating roofs for storage vessels for control of volatile organic compounds or hazardous air pollutants. For this section, ‘hydrocarbon combustion flare’ means either a flare used to comply with an applicable New Source Performance Standard or Maximum Available Control Technology standard (including uses of flares during startup, shutdown, or malfunction permitted under such a standard), or a flare that serves to control emissions of waste streams comprised predominately of hydrocarbons and containing no more than 230 mg/dscm hydrogen sulfide.”

## **II. Incorporation by Reference**

In this document, EPA is proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Georgia Rule 391-3-1-.01, “Definitions” at section (qqqq), state effective on July 29, 2020, which revises the definition of “Pollution control project,” and Georgia Rule 391-3-1-.03(6), “Exemptions,” also state effective on July 29, 2020, which is revised to establish consistency with the proposed revisions to 391-3-1-.01(qqqq). EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 4 office (please contact the person identified in the “For Further Information Contact” Section of this preamble for more information).

## **III. Proposed Action**

EPA is proposing to approve the aforementioned changes to the Georgia SIP. Specifically, EPA is proposing to approve the revisions to section (qqqq) of Rule 391-3-1-.01, “Definitions” and throughout section 391-3-1-.03(6), “Exemptions.” EPA is proposing to approve these changes because they are consistent with the CAA.

## **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided they meet the criteria of the CAA. This action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

**List of Subjects in 40 CFR Part 52.**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 et seq.

Dated: February 3, 2022.

Daniel Blackman,  
*Regional Administrator,*  
*Region 4.*

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